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**IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY**


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**STATE OF IOWA,****Plaintiff,****v.****JASON BESLER,****Defendant.****CASE NO. CVCV080344**


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**RULING ON APPLICATION FOR  
LEAVE TO FILE PETITION FOR WRIT  
OF QUO WARRANTO**


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This matter came before the court on February 18, 2019, for hearing on the application of the relator, Gary Dickey, for leave to file a petition for writ of quo warranto. Defendant appeared in person and was represented by Assistant Iowa Attorneys General Jeffrey Thompson and Emily Willits. Gary Dickey appeared as the relator. Having entertained the arguments of the parties, having reviewed the court file, and being otherwise fully advised in the premises, the court now rules and, for the reasons stated herein, **DENIES** the application.

The essential facts are not disputed. Defendant was one of two nominees to fill a vacancy on the district bench for the Sixth Judicial District of Iowa. Defendant's Exhibit D. [Note: Relator's application was not supported by any affidavits nor did relator request that the court require that defendant's affiant appear at the hearing so that he could be cross-examined. See I.R.Civ.P. 1.431(6).] The names of the two nominees were communicated to Governor Kim Reynolds by separate emails from the State Court Administrator and the chairperson of the Sixth Judicial District Nominating Commission on May 22, 2018. *Id.* On June 21, 2018, Governor Reynolds communicated to her Chief of Staff, Ryan Koopmans, that she had decided to appoint defendant to fill the aforementioned vacancy. *Id.* However, due to oversight, defendant was not actually informed, neither verbally nor in writing, of his appointment until June 25, 2018. *Id.*

The relator argues that the Governor failed to appoint defendant within the 30-day time period allowed by Article V, Section 15 of the Iowa Constitution and therefore defendant is unlawfully holding the office of district court judge. However, relator does not cite any binding legal authority directly supporting this proposition. Defendant argues, amongst other things, that Iowa law does not specify how a judicial appointment of the instant sort is actually effectuated. In particular, defendant argues that there is no authority supporting the proposition that defendant's appointment must be in writing to be effective.

Iowa Code §69.10 requires appointments to be in writing and to be filed in the office of

the Secretary of State, but does not require those events to occur on the date the appointment is due. See *State ex rel. Halbach v. Claussen*, 250 N.W.195, 201 (Iowa 1933) (Quo warranto action wherein it was held that noncompliance with the predecessor statute to Section 69.10 would not invalidate an appointment, rather, it would only constitute an irregularity which could be complied with any time and which would not affect the validity of the appointment.); see *The Honorable Robert L. Larson*, 1969 WL 181659, at \*4 (Iowa A.G. 1969).

The court agrees with and adopts defendant's argument and rules that, as a matter of law, defendant's appointment was effective as of the time the Governor decided to appoint him which was on or before June 21, 2018, when she verbally communicated her decision to her Chief of Staff and therefore was within the 30-day time period required by the Iowa Constitution, notwithstanding the fact that defendant was not actually informed of his appointment nor was his appointment memorialized in any writing within said 30-day time period.

For the foregoing reasons, the relator's application must be and hereby is **DENIED**. Because of the foregoing ruling, the court does not address defendant's other arguments supporting his resistance to relator's application, including but not limited to his arguments regarding relator's standing (or lack thereof) to file his application.

Costs are taxed to the relator.



State of Iowa Courts

**Type:** OTHER ORDER

<b>Case Number</b>	<b>Case Title</b>
CVCV080344	STATE OF IOWA VS JASON BESLER

So Ordered

A handwritten signature in cursive script, reading 'Robert B. Hanson', written in dark ink.

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**Robert B. Hanson, District Court Judge,  
Fifth Judicial District of Iowa**